

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILL 597

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO INSTRUCTIONAL MATERIALS; ENACTING THE PRINT
DISABILITY ACCESS ACT; REQUIRING TEXTBOOKS IN ALTERNATE
ACCESSIBLE FORMAT; PROVIDING POWERS AND DUTIES; PROVIDING FOR A
PRIVATE RIGHT OF ACTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Public School Code is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the
"Print Disability Access Act"."

Section 2. A new section of the Public School Code is
enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Print
Disability Access Act:

A. "alternate accessible format" means one of

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underscored material = new
[bracketed material] = delete

1 several alternatives to traditional print, including compact
2 discs, other aural media, digital talking books or electronic
3 versions of printed instructional materials capable of being
4 used to produce the materials in aural media;

5 B. "competent authority" means a licensed physician
6 or osteopathic physician who may consult with colleagues in
7 associated disciplines;

8 C. "educational institution" means a public school
9 or public post-secondary educational institution;

10 D. "instructional material" means textbooks and
11 other educational media that are used as the basis for
12 instruction, including supplementary material, printed material
13 included in instructional kits and electronic media;

14 E. "structural integrity" means all of the printed
15 instructional materials, including the text of material,
16 sidebars, table of contents, chapter headings and subheadings,
17 footnotes, glossaries and bibliographies, but not including
18 nontextual elements;

19 F. "student" means a person certified by a
20 competent authority as having a print disability, including
21 dyslexia, from organic dysfunction that is of sufficient
22 severity to prevent the person from reading printed material in
23 a normal manner, who is accepted, enrolled in or attending an
24 educational institution; and

25 G. "textbook" means a book, a system of

1 instructional materials or a combination of a book and
2 supplementary instructional material that conveys information
3 to the student or otherwise contributes to the learning
4 process, including electronic textbooks."

5 Section 3. A new section of the Public School Code is
6 enacted to read:

7 "[NEW MATERIAL] INSTRUCTIONAL MATERIALS.--

8 A. A publisher that prints instructional materials
9 published on or after July 19, 2006 for students attending
10 educational institutions shall provide, upon request of the
11 institution, any printed instructional materials in an
12 electronic format mutually agreed upon by the publisher and the
13 educational institution.

14 B. The formats used shall include the nationally
15 recognized standard for conversion of published files to aural
16 and other media established under the federal Individuals with
17 Disabilities Education Improvement Act of 2004.

18 C. If no nationally recognized standard is
19 appropriate, as determined by the department, publishers shall
20 provide the file in another mutually agreed upon electronic
21 format.

22 D. The educational institution may use the
23 electronic version of printed instructional materials that is
24 provided pursuant to the Print Disability Access Act to
25 transfer or arrange for the transfer of the printed

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1 instructional materials into an alternate accessible format.
2 The educational institution has the right to provide the
3 alternate accessible format copy of the printed instructional
4 materials to students as permitted by applicable federal
5 copyright law.

6 E. The electronic version of the printed
7 instructional materials shall:

- 8 (1) comply with any applicable federal
9 standard;
10 (2) otherwise maintain the structural
11 integrity of the printed instructional materials; and
12 (3) include the latest corrections and
13 revisions of the printed instructional materials as necessary.

14 F. The publisher shall provide the electronic
15 versions of the printed instructional materials to the
16 educational institution at no additional cost and within ten
17 business days after receipt of a written request that does all
18 of the following:

- 19 (1) certifies that the educational institution
20 or the student has purchased the printed instructional
21 materials for use by the student;
22 (2) certifies that the student is unable to
23 use printed instructional materials;
24 (3) certifies that the printed instructional
25 materials are for use by the student in connection with a

1 course at the educational institution; and

2 (4) is signed by the:

3 (a) person responsible for providing
4 educational services pursuant to the federal Individuals with
5 Disabilities Education Act;

6 (b) coordinator of services for students
7 with disabilities at the educational institution;

8 (c) person responsible for monitoring
9 the educational institution's compliance with Section 504 of
10 the federal Americans with Disabilities Education Act of 1990
11 or the federal Rehabilitation Act of 1973; or

12 (d) vocational rehabilitation counselor
13 responsible for providing services under an individualized plan
14 for employment created pursuant to the federal Rehabilitation
15 Act of 1973.

16 G. A publisher may require that the request include
17 a statement signed by the educational institution agreeing
18 that:

19 (1) the electronic copy of the printed
20 instructional materials will be used solely for the purpose of
21 producing material for the student's educational purposes; and

22 (2) the student or educational institution
23 will not copy, publish or in any other way distribute the
24 instructional materials in any format for use by anyone other
25 than the original student, except that the educational

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1 institution may provide those materials to another qualifying
2 student who has signed a statement agreeing to the terms
3 contained in this section and unless it is otherwise permitted
4 by federal law.

5 H. Nothing in the Print Disability Access Act shall
6 be deemed to authorize any use of instructional materials that
7 would constitute an infringement of copyright pursuant to
8 applicable federal copyright law."

9 Section 4. A new section of the Public School Code is
10 enacted to read:

11 "[NEW MATERIAL] GUIDELINES.--The department, in
12 consultation with representatives from educational institutions
13 and publishers, shall adopt guidelines consistent with the
14 Print Disability Access Act for the implementation and
15 administration of that act. The guidelines shall address all
16 of the following:

17 A. the designation of instructional materials
18 deemed required or essential to student success;

19 B. definitions clarifying what is required to
20 maintain structural integrity and requirements for presentation
21 of visual elements in aural form;

22 C. requirements for approval and procurement of
23 textbooks that are available in a computer or electronic format
24 and procedures for suspension of publishers from the
25 procurement process if the publisher fails to comply with the

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1 provisions of the Print Disability Access Act;

2 D. an administrative complaint process to be
3 followed for complaints against a publisher;

4 E. definitions clarifying what constitutes
5 "educational purposes"; and

6 F. any other matters the department deems necessary
7 or appropriate to carry out the purposes of the Print
8 Disability Access Act."

9 Section 5. A new section of the Public School Code is
10 enacted to read:

11 "[NEW MATERIAL] PRIVATE RIGHT OF ACTION.--A student who
12 contends that there has been a violation of the Print
13 Disability Access Act has the right to pursue a private right
14 of action in the district court if the student has exhausted
15 the administrative complaint process. Organizations
16 representing the interests of persons who have reading
17 disabilities shall have standing to assert any right afforded
18 in the Print Disability Access Act and shall be subject to the
19 same requirements and terms as a student. Should the student
20 or organization prevail in a lawsuit, the student or
21 organization shall be entitled to injunctive relief and
22 reasonable attorney fees and costs. No other type of monetary
23 damages shall be available."